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www.uspto.gov

Kenneth A. Clark
Rankin, Hill, Porter & Clark LLP
925 Euclid Avenue, Suite 700
Cleveland, Ohio 44115-1405

In re Application of	:	DECISION ON
Susumu Yoshida et al	:	
PCT No.: PCT/JP2003/16953	:	
Application No.: 10/540,041	:	PAPERS FILED
Int. Filing Date: 26 December 2003	:	
Priority Date: 27 December 2002	:	
Attorney's Docket No.: IWI-16045	:	UNDER 37 CFR 1.42
For: OIL-IN WATER TYPE EMULSION	:	
COSMETIC COMPOSITION	:	

This is a decision on the "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 USC 371" filed 01 December 2005, which has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 22 June 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). Applicant, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because an executed oath or declaration was not provided.

On 17 November 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date" must be submitted within two months from the date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

In response to the Notification mailed on 17 November 2005, applicants filed a declaration on 01 December 2005 signed by Keiko Nakamura as the trustee of the inventor, Tadashi Nakamura, now deceased

DISCUSSION

The declaration is unacceptable at this time because it is not clear that Keiko Nakamura is the sole heir or the legal representative for the deceased inventor, Tadashi Nakamura. Although Keiko Nakamura is the trustee of Tadashi Nakamura's estate this is not sufficient under 37 CFR 1.42 in order for the declaration to be accepted.

If Keiko Nakamura is the sole heir, it must be stated because, otherwise, there may be other heirs who are required to also sign the declaration. Therefore, the declaration must indicate that Keiko is the sole heir for the deceased inventor or is the legal representative for the deceased inventor to accept the application under 37 CFR 1.42.


In addition, the declaration did not satisfy 37 CFR §1.497(b)(2) because it does not state the citizenship, residence, and mailing address of both the heir(s)/legal representative(s) and the deceased inventor as required.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is not accepted.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Request Under 37 CFR 1.42." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the office of PCT Legal Administration.



Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3276
Fax: (571) 273-0459